

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
December 8, 2008

D053999 Maria L. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Maria L. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED

D052830 People v. Caban

The judgment is affirmed. Nares, J.; We Concur: Benke, Acting P.J., Haller, J.

D053406 People v. Gill

The appeal is dismissed. McConnell, P.J.; We Concur: Nares, J., Irion, J.

D052106 New Hampshire Indemnity Co. v. Professional Claim Services, Inc.

The order is affirmed and the matter is remanded to the trial court for its determination of an award to PCS of attorney fees on appeal. PCS is also entitled to costs on appeal. McConnell, P.J.; We Concur: O'Rourke, J., Aaron, J.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Terry O'Rourke
Clerk: D. Moore

D052689 Pye v. Robinson et al.

Cause called on merits. Carlos J. Tavares, Esq. argued for appellant. Steven A. Micheli, Esq. argued for respondent. Mr. Tavares replied. Cause submitted.

D051418 In re E.G., a Juvenile

D052271 In re E.G., a Minor on Habeas Corpus

Cause called on merits. Melissa Hill, Esq. argued for appellant. Michael Murphy, Deputy Attorney General argued for respondent. Ms. Hill replied. Cause submitted as to D051418 ONLY.

D052337 Gilb v. City of La Mesa

Cause called on merits. Samuel Dagan, Esq. argued for appellant. John P. McCormick, Esq. argued for respondent. Mr. Dagan replied. Cause submitted.

D052687 AVAAK, Inc. v. Shi

Cause called on merits. Shawn Allen McMillan, Esq. argued for appellant. John J. Kang, Esq. argued for respondent. Mr. McMillan replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D052291 Garza v. Kolender

Cause called on merits. James R. O'Day, Deputy Counsel argued for respondent, Kolender. Robin Gail Eifler, Esq. argued for real party in interest and respondent, Brentwood. Richard Steiner, Esq. argued for appellant.
Cause submitted.

Court recessed at 10:15 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

D049453 Coast Loans, Inc. v. Scripps Investments and Loans Inc., et al.

Cause called on merits. J. Mark Dunbar, Esq. argued for appellant. B. J. Haeck, Esq. argued for respondent.
Cause submitted.

Court recessed at 10:22 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and James McIntyre
Clerk: D. Moore

D052254 Dey v. Continental Central Credit et al.

Cause called on merits. Deborah Lynn Raymond, Esq. argued for appellant. Michael E. Williams, Esq. argued for respondent. Ms. Raymond replied. Causes submitted.

D051689 Castaneda v. Abro et al.

Cause called on merits. Stephen F. Lopez, Esq. argued for appellant. James C. Mitchell, Esq. argued for respondent. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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December 8, 2008 (Continued)

D053121 In re J. B., a Juvenile

Cause called on merits. Mark Ronald Turner, Esq. argued for appellant. Andrea St. Julian, Esq. argued for the minor. Katharine Bird, Deputy Counsel argued for respondent. Mr. Turner replied. Cause submitted.

Court recessed at 2:33 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Joan Irion

D048929 People v. Garibay

Cause called on merits. Julie Sullwold Hernandez, Esq. argued for appellant. Eric Swenson, Deputy Attorney General argued for respondent. Ms. Hernandez replied. Cause submitted.

Court recessed at 3:00 p.m. until Tuesday, December 9, 2008 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
December 9, 2008

D050070 Stonecrest Square Auto Center, LLC v. Equilon Enterprises, LLC et al.
The petition for rehearing is denied.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Judith Haller
Clerk: M. Hubbard

D52434 Sun County Builders, Inc. v. Coker Equipment Company, Inc.
Cause called on merits. Aaron Winn, Esq. argued for appellant. Laurence Phillips, Esq. argued for respondent. Mr. Winn replied. Cause submitted.

Court recessed at 9:17 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and James McIntyre

D052431 Gechter v. City of Chula Vista
Cause called on merits. Scott Zielinski, Esq. argued for appellant. Micah Parzen, Esq. argued for respondent.
Mr. Zielinski replied. Cause submitted.

Court recessed at 9:50 a.m. until 1:30 p. m.

D052158 Arroyo v. City of San Diego
Judgment affirmed. Arroyo to bear the City's costs on appeal. Haller, J.; We Concur: Nares, Acting P.J., Aaron, J.

D051805 San Diego City Employees' Retirement System v. City of San Diego
On its own motion, this court grants rehearing of the November 13, 2008 order dismissing the City of San Diego's (the City) appeal.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

December 9, 2008 (Continued)

D051805 San Diego City Employees' Retirement System v. City of San Diego

Presiding Justice McConnell and Associate Justices O'Rourke and Irion have read and considered San Diego City Employees' Retirement Systems' (SDCERS) motion to dismiss the City of San Diego's (the City) appeal and the City's opposition thereto. The City purports to appeal the September 17, 2007 judgment of dismissal of the City's sixth amended cross-complaint, which is a nonappealable interlocutory judgment. The appeal is dismissed. In reaching our decision, we have read and considered the City's motion to vacate the previous order of dismissal, dated November 13, 2008, and SDCERS's opposition to the motion. The City's request for judicial notice filed November 17, 2008, is granted in part; the court takes judicial notice of the lodged exhibits with the exception of exhibits M and Q. SDCERS's request for sanctions is denied.

D052507 In re Walker on Habeas Corpus

The petition is denied.

D049983 Troyk v. Farmers Group Inc., et al.

The judgment is reversed and the matter is remanded with directions that the trial court: (1) vacate its order granting Troyk's motion for summary judgment; and (2) issue a new order denying Troyk's motion for summary judgment, Farmers' motion for summary judgment, and Troyk's motion for summary adjudication of his UCL and breach of contract causes of action, but granting Troyk's motion for summary adjudication of Farmers' affirmative defenses. The parties shall bear their own costs of appeal. CERTIFIED FOR PARTIAL PUBLICATION. McDonald, J.;
We Concur: Nares, Acting P.J., Haller, J.

D052724 People v. Salinas et al.

Upon written request filed by appellant Ricardo Manzo, the appeal as to Ricardo Manzo is DISMISSED and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).) Respondent's brief for Miguel Salinas is due 30 days from the date of this order.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Joan Irion
Clerk: D. Moore

D052124 Rankin v. Longs Drug Stores California, Inc.

Cause called on merits. Laura Ho, Esq. argued for appellant. Timothy Joseph Long, Esq. argued for respondent.
Ms. Hoe replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
December 9, 2008 (Continued)

D052889 Kahn v. Humphries et al.

Cause called on merits. No appearance by appellant's counsel. Scott Andrew Savary, Esq. argued for respondent. Cause submitted.

D052237 Riverwatch et al. v. Olivenhain Municipal Water District

Cause called on merits. Everett Leon Delano, Esq. argued for appellant, Riverwatch. Walter Edward Rusinek, Esq. argued for appellant, Pala Band of Mission Indians. Wesley W. Peltzer, Esq. argued for respondent, Olivenhain. Patrick Breen, Esq. argued for real party in interest and respondent, Gregory Canyon, Ltd. Mr. Rusinek replied. Cause submitted.

Court recessed at 3:06 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Joan Irion

D052130 Bischoff v. LCG Blue Inc., et al.

Cause called on merits. David A. Kay, Esq. argued for appellant. William Baker VanDusen, esq. argued for respondent. Mr. Kay replied. Cause submitted.

Court recessed at 3:50 p.m. until Wednesday, December 10, 2008 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D053130 In re Kenneth S. et al., Juveniles

The order dismissing the section 388 modification petition is reversed. We necessarily reverse the order dismissing dependency jurisdiction. The matter is remanded to the juvenile court with directions to hold an evidentiary hearing on Kenneth's request to modify the prior visitation order. McDonald, J.; We Concur: Benke, Acting P.J., Nares, J.

D050649 People v. Grossi

The judgment is affirmed. McConnell, P.J.; We Concur: Nares, J., Haller, J.

D048929 People v. Garibay

The penal Code section 12022.7, subdivision (a) enhancements are stricken. In all other respects the judgment is affirmed. The trial court is directed to modify the abstract of judgment accordingly and forward an amended abstract of judgment to the Department of Corrections and Rehabilitation. Irion, J.; We Concur: Nares, Acting P.J., Haller, J.

D053039 In re Brandon R., a Juvenile

The petition for rehearing is denied.

Court convened at 9:00 a.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke
Clerk: D. Moore

D052505 City of San Diego v. Mission Valley Partnership et al.

Cause called on merits. Joe B. Cordileone, Esq. argued for appellant. Michael Joseph Holmes, Esq. argued for respondent, Mission Valley Partnership. Richard A. Schulman, Esq. argued for respondent, Calmat Co.

Mr. Cordileone replied. Cause submitted.

D052255 Carmelo et al. v. Candelaria et al.

Cause called on merits. Edwin J. Richards, Esq. argued for appellant. Elizabeth Aronson, Esq. argued for respondent. Mr. Richards replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D052943 Tang v. CS Clean Systems

Cause called on merits. Chuanchi Tang, Esq. argued for appellant. Troy Masami Yoshino, Esq. argued for respondent. Mr. Tang replied. Cause submitted.

Court recessed at 10:02 a.m. to change panel members. New panel members: The Honorable James McIntyre, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron

D051711 Mendoza et al. v. Mayer Roofing, Inc.

Cause called on merits. J. Jason Hill, Esq. argued for appellant. Michael D. Singer, Esq. was present in oral argument for appellant, but did not argue. Seth A. Rafkin, Esq. argued for respondent. Mr. Hill replied. Cause submitted.

Court recessed at 10:45 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Joan Irion
Clerk: D. Moore

D051241 People v. Brown

D053027 In re Brown on Habeas Corpus

Cause called on merits. Melissa Hill, Esq. argued for appellant. Donald Ostertag, Deputy Attorney General argued for respondent. Ms. Hill replied. Cause submitted as to appeal only, D051241.

Court recessed at 1:55 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion

D052941 In re Cassandra R., a Juvenile

Cause called on merits. Donna Kaiser, Esq. argued for appellant. Katharine Bird, Deputy County Counsel argued for respondent. William Henry Hook, Esq. was present in oral argument for the minor, and joined with County Counsel's argument. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
December 10, 2008 (Continued)

D051862 Arnold v. The Senate Committee

Cause called on merits. Diane Elizabeth Bond, Esq. argued for appellant. John Adkisson, Esq. argued for respondent. Gail Diane Whaley, Esq. was present in oral argument for respondent, but did not argue. Ms. Bond replied.
Cause submitted.

D051983 Brown et al. v. Ransweiler

Cause called on merits. Alvin M. Gomez, Esq. argued for appellant. Nathan C. Northup, Chief Deputy County Counsel argued for respondent. Lee Roistacher, Esq. argued for amicus curiae for respondent. Cause submitted.

Court recessed at 3:04 p.m. until Thursday, December 11, 2008 at 9:00 a.m.

D053905 In re Woodall on Habeas Corpus

The petition is denied.

D054227 Carmen P. v. Superior Court of San Diego County/San Diego County Health & Human Services Agency

The petition is denied.

D053554 Mills v. Barrett Business Services, Inc./MRS Enterprises, LLC et al. Upon written stipulation filed by the parties to the appeal, the appeal is DISMISSED as to MRS Enterprises, LLC and Merav Shina ONLY and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

D053845 In re Cole C., a Juvenile

The request to Deem Mother's Notice of Appeal Timely Due to Excusable Neglect by Appellate Defenders, Inc. has been reviewed by Associate Justices McDonald, Benke, and O'Rourke. The request is denied. The notice of appeal of Heather C. is untimely and is accordingly DISMISSED.

D054194 Ames v. Superior Court of San Diego County/People

The petition for writ of mandate Ames v. Superior Court D054194, will be considered at the same time as the pending appeal, People v. Ames D054213.

D054153 All Valley Home Health Care, Inc. v. Superior Court of San Diego County/Jensen

The petition for writ of mandate and request for stay have been read and considered by Justices Benke, O'Rourke and Irion. The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D053499 In re Heather W. et al., Juveniles

The appeal is dismissed. Nares, J.; We Concur: Huffman, Acting P.J., Haller, J.

D053662 In re Samantha M., a Juvenile

The appeal is dismissed. Haller, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D051755 People v. Gilbert

The judgment is affirmed. O'Rourke, J.; We Concur: Haller, Acting P.J., McDonald, J.

**D052918 Carmen P. v. Superior Court of San Diego County/San Diego County Health
and Human Services Agency et al.**

The petition for rehearing and the request to reinstate stay are denied.

D053597 In re Carmen P. on Habeas Corpus

The petition for rehearing and the request to reinstate stay are denied.

D053165 In re Elizabeth P., a Juvenile

The petition for rehearing and the request to reinstate stay are denied.

D052941 In re Cassandra R., a Juvenile

The appeal is dismissed. Aaron, J.; We Concur: Huffman, Acting P.J., Irion, J.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable
Associate Justices Judith Haller and Alex McDonald
Clerk: D. Moore

D052580 Parker-Montes v. Parker

Cause called on merits. Joshua Parker, argued for appellant in pro per. Richard R. Ravreby,
Esq. argued for respondent. Mr. Parker replied. Cause submitted.

Court recessed at 9:25 a.m. to change panel members. New panel members: The Honorable
Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex
McDonald and Joan Irion

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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December 11, 2008 (Continued)

D052179 Greco & Traficante v. Fidelity & Guaranty Insurance Company

Cause called on merits. Jon S. Brick, Esq. argued for appellant. John Tinley Brooks, Esq. argued for respondent.

Mr. Brick replied. Cause submitted.

D051517 Anderson v. Vista Pioneers I, Inc.

Cause called on merits. William Anderson, argued for appellant, in pro per. Thomas A. Scutti, Esq. argued for respondent. Mr. Anderson replied. Cause submitted.

Court recessed at 10:13 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Alex McDonald

Clerk: D. Moore

D051744 People v. McKenzie

Cause called on merits. Elizabeth Voorhies, Deputy Attorney General argued for respondent. Stephen Merritt Hinkle, Esq. argued for appellant. Cause submitted.

D050761 Hays et al. v. Ransbury et al.

Cause called on merits. John Morris, Esq. argued for appellant. Terri Lynn Ransbury, argued for respondent, in pro per. Kris Thompson, argued for respondent, Tierney. Mr. Morris replied. Cause submitted.

Court recessed at 2:03 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Cynthia Aaron

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
December 11, 2008 (Continued)

D052178 Gabriel v. Canyon Haven Homeowners Association

Cause called on merits. Joseph J. Rego, Esq. was present in oral argument for appellant. Kris Steven Bahr, Esq. was present in oral argument for respondent. Cause submitted.

Court recessed at 2:08 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron

D052585 Lyman v. Mercedes-Benz USA, LLC

Cause called on merits. Susan A. Yeck, Esq. argued for appellant. Gregg Mathieu Audet, Esq. argued for respondent. Ms. Yeck replied. Cause submitted.

D052361 Selleck et al. v. Markell et al.

Cause called on merits. George M. Wallace, Esq. argued for appellant. Bertram Paul Husband, Esq. argued for respondent. Mr. Wallace replied. Cause submitted.

Court recessed at 2:55 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Cynthia Aaron

D052325 Townsend v. Townsend

Cause called on merits. Richard H. Benes, Esq. argued for appellant. Philip H. Stillman, Esq. argued for respondent. Mr. Benes replied. Stephen A. Bond, Esq. was present in oral argument with Mr. Benes but did not argue. Cause submitted.

Court recessed at 3:25 p.m. until Friday, December 12, 2008 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
December 12, 2008

D053299 In re Erika S., a Juvenile

The judgment is affirmed. Irion, J.; We Concur: McDonald, Acting P.J., Aaron, J.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke
Clerk: D. Moore

D053273 In re Nicholas T., a Juvenile

Cause called on merits. Christopher R. Booth, Esq. argued for appellant. Amanda Benedict, Esq. argued for the minor. Lisa Maldonado, Deputy County Counsel argued for respondent. Mr. Booth replied. Cause submitted.

D051840 City of San Diego v. Means

Cause called on merits. Joe Cordileone, Esq. argued for appellant. Paula S. Rosenstein, Esq. argued for respondent. Mr. Cordileone replied. Cause submitted.

Court recessed at 9:50 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Richard Huffman

D052082 San Diego Unified School District v. County of San Diego

Cause called on merits. Cynda Day-Wilson, Esq. argued for appellant. Dough J. Simpson, Esq. argued for respondent. Ms. Wilson replied. Cause submitted.

Court adjourned at 10:30 a.m.

D052620 In re Antonio A., a Juvenile

The judgment terminating parental rights is reversed and the case is remanded to the juvenile court with directions to order the Agency to comply with the notice provisions of ICWA. If, after proper notice, no tribe claims Antonio is an Indian child, the court shall reinstate the judgment. If, on the other hand, a tribe claims Antonio is an Indian child, the juvenile court shall proceed in conformity with ICWA. Haller, J.; We Concur: McConnell, P.J., Irion, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
December 12, 2008 (Continued)

**D054089 Terrance J. v. Superior Court of San Diego County/San Diego County Health
and Human Services Agency**

The attorney for petitioner Terrance J. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED

D050070 Stonecrest Square Auto Center, LLC v. Equilon Enterprises, LLC et al.

The request for publication of the opinion is denied.

D054260 Nayab v. Superior Court of San Diego County/Tandarich

The petition is denied.

